

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Case No. 3:12-cv-00475-MR
[Criminal Case No. 3:09-cv-00084-MR-1]**

DAMIEN MAURICE CABBLE,)

Petitioner,)

vs.

UNITED STATES OF AMERICA,

Respondent.)

ORDER

THIS MATTER is before the Court on its own motion following a review of the docket in this case.

On July 30, 2012, Petitioner filed a *pro se* motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner contends that he is entitled to relief from his sentence based on the Fourth Circuit's *en banc* decision in United States v. Simmons, 649 F.2d 237 (4th Cir. 2011). Petitioner argues that in light of the holding in Simmons, his prior North Carolina convictions no longer support his status as a career offender under U.S.S.G. § 4B1.1. Accordingly, Petitioner asserts that he is entitled

to have his sentence vacated and to be resentenced without consideration of the prior North Carolina convictions. [Doc. 1].¹

On November 6, 2012, Leah Kane, an attorney with the Federal Defenders of Western North Carolina, filed a notice of intention to conduct a review within 45 days. [Id., Doc. 3].² On November 21 and 26, 2012, attorneys Patrice Lewis and Carl Horn, III (hereinafter “Counsel of Record”), filed notices of general appearance on behalf of Petitioner and stated that they intended to file an amended § 2255 petition on or before December 21, 2012. [Id., Docs. 4,5]. To date, no such amended petition has been filed.

On January 16, 2014, this Court entered an Order denying Petitioner’s *pro se* motion for appointment of counsel after noting the general appearances of Counsel of Record. [Id. Doc. 8].

If counsel intend to file any supplemental memorandum on behalf of Petitioner further elucidating the claims that he has pending, such memorandum must be filed with the Court within thirty days from entry of this Order.

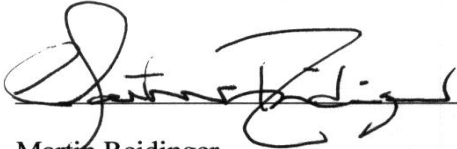
¹ Petitioner contends that his prior North Carolina state convictions for possession with intent to sell marijuana and possession with intent to sell cocaine did not subject him to a sentence of imprisonment exceeding one year. [Doc. 1 at 2].

² The Judges of this District appointed the Federal Defenders to determine whether defendants convicted in this district might qualify for post-conviction relief based on the holding in Simmons. [See 3:12-mc-92, Order filed May 22, 2012].

IT IS, THEREFORE, ORDERED that Counsel of Record may file a supplemental memorandum within thirty (30) days from entry of this Order and shall file certification with the Court within seven (7) days from entry of this Order that a copy of this Order has been served on the *pro se* Petitioner.

IT IS SO ORDERED.

Signed: January 20, 2014


Martin Reidinger
United States District Judge

